

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

NICHOLAS COLUCCI, d/b/a EZ LINE PUTTERS,	§ § § § § § § § § §	CIVIL NO. 6:08-CV-288-LED
Plaintiff,	§	PATENT CASE
v.	§	
CALLAWAY GOLF COMPANY,	§	JURY TRIAL DEMANDED
Defendant.	§	

**COUNTER DEFENDANT NICHOLAS COLUCCI'S ANSWER
TO COUNTER PLAINTIFF CALLAWAY GOLF COMPANY'S
COUNTERCLAIMS**

TO THE HONORABLE COURT:

Counter-defendant Nicholas Colucci ("Colucci") answers the counterclaims ("Counterclaims") of counter-plaintiff Callaway Golf Company ("Callaway Golf") as follows:

THE PARTIES

- 48. Admitted.
- 49. Admitted.

JURISDICTION AND VENUE

50. Colucci admits that the allegations in Callaway Golf's Counterclaims arise under the Patent Laws of the United States, Title 35 United States Code, and the Trademark Laws of the United States, Title 15, United States Code. Colucci denies all other allegations of Paragraph 50 of the Counterclaims.

- 51. Admitted.

FIRST CLAIM FOR RELIEF

(Declaratory Judgment of Non-infringement of the '927 Patent)

52. Colucci repeats and realleges its responses to Paragraphs 48-51 of the Counterclaims.

53. Colucci admits that there is a substantial, actual and continuing controversy between Colucci and Callaway Golf as to infringement of the '927 Patent by Callaway Golf, and denies all other allegations of Paragraph 53 of the Counterclaims.

54. Denied.

55. Denied.

SECOND CLAIM FOR RELIEF

(Declaratory judgment of Invalidity of the '927 Patent)

56. Colucci repeats and realleges its responses to Paragraphs 48-55 of the Counterclaims.

57. Colucci admits that there is a substantial, actual and continuing controversy between Colucci and Callaway Golf as to the validity and enforceability of the '927 Patent, and denies all other allegations of Paragraph 57 of the Counterclaims.

58. Denied.

THIRD CLAIM FOR RELIEF

(Declaratory Judgment Against Colucci's Claims for
Trade Dress Infringement and Unfair Competition)

59. Colucci repeats and realleges its responses to Paragraphs 48-58 of the Counterclaims.

60. Admitted.

61. Colucci admits that there is a substantial, actual and continuing controversy between Colucci and Callaway Golf as to Callaway Golf's unfair competition and infringement of Colucci's asserted trade dress, and denies all other allegations of Paragraph 61 of the Counterclaims.

62. Denied.

63. Denied.

FOURTH CLAIM FOR RELIEF

(Declaratory Judgment of Callaway Golf's Right to Use Certain Colors, Shapes and other Features in its Putter Products)

64. Colucci repeats and realleges its responses to Paragraphs 48-63 of the Counterclaims.

65. Colucci admits that there is a substantial, actual and continuing controversy between Colucci and Callaway Golf as to Callaway Golf's infringement of Colucci's asserted trade dress in certain colors, shapes and other features of golf putters, and denies all other allegations of Paragraph 65 of the Counterclaims.

66. Denied.

PRAYER FOR RELIEF

Colucci denies that Callaway Golf is entitled to any of the relief contained in sections (a) through (j) of its Prayer for Relief.

DEMAND FOR JURY TRIAL

Pursuant to Rule 28, Fed. R. Civ. P., Colucci hereby demands a jury trial for all issues triable of right by a jury in this case.

Dated: September 8, 2008

Respectfully submitted,

/s/Andy Tindel w/permission of Lead Attorney

ANDY TINDEL

State Bar No. 20054500

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CERTIFICATE OF SERVICE

This is to certify that all known counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per E. Dist. Tex. Loc. Ct. R. CV-5(a)(3) on this the 8th day of September, 2008. Any other known counsel of record will be served with a copy of this document by email and/or facsimile transmission.

/s/Andy Tindel

Andy Tindel